

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NYJEE L. BOYD,

Plaintiff,

vs.

**9:18-CV-1333
(TJM/ATB)**

JOHN DOE #1, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this Complaint to Magistrate Judge Andrew T. Baxter for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that Defendants, correction officers and officials at Clinton Correctional Facility, an institution operated by the New York State Department of Corrections and Community Supervision (“DOCCS”), violated his constitutional rights in a variety of ways, including by assaulting him and by retaliating against him for exercising his First Amendment rights. Judge Baxter’s Report-Recommendation addresses Defendants’ motion for summary judgment and Plaintiff’s motion for leave to amend his Complaint..

Judge Baxter’s Report-Recommendation, dkt. # 6, issued on November 30, 2021, recommends that the Court grant Defendants’ motion for summary judgment in part and deny that motion in part. Judge Baxter concludes that Plaintiff met the statutory

requirement to exhaust his administrative remedies on some claims and failed to exhaust on others. Summary judgment is appropriate on the unexhausted claims, he finds. Judge Baxter also concludes that an evidentiary hearing is necessary to resolve whether Plaintiff exhausted a small number of his claims. Judge Baxter further finds that no evidence exists to support some of Plaintiff's exhausted claims, and recommends summary judgment on them. Judge Baxter also finds that Plaintiff's attempt to amend his Second Amended Complaint is not timely and futile in any case. He recommends that the Court deny that motion. Finally, Judge Baxter recommends dismissal of Plaintiff's claims against the remaining unnamed Doe defendants. Judge Baxter finds that Plaintiff did not diligently pursue their identities and did not seek to include those individuals in a timely fashion.

No party objected to the Report-Recommendation. The time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Judge Baxter, dkt. # 107, is hereby **ACCEPTED** and **ADOPTED**. Defendants' motion for summary judgment, dkt. # 88, is hereby **GRANTED IN PART** and **DENIED IN PART**, as follows:

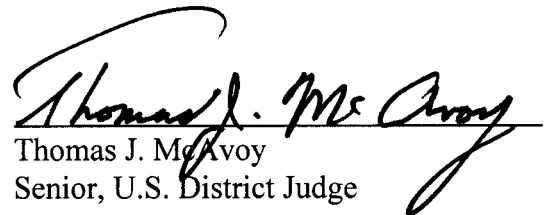
1. The motion is **DENIED** with respect to:
 - a. Plaintiff's Eighth Amendment claim against Defendant Baer based on the alleged events that occurred on March 29, 2018;
 - b. Plaintiff's Eighth Amendment claim against Defendant Hunt based on

- the alleged events that occurred on April 6, 2018;
- c. Plaintiff's First and Eighth Amendment claims against Defendant Baer based on the alleged events that occurred on April 17, 2018;
 - d. Plaintiff's First Amendment claim against Defendant Young based on the alleged events that occurred on April 17, 2018;
2. Defendants' motion for summary judgment is hereby **GRANTED** in all other respects;
3. The Court will schedule an evidentiary hearing on the issue of exhaustion of administrative remedies with respect to:
- a. Plaintiff's First and Eighth Amendment claims against Defendant Baer based on the alleged events that occurred on April 17, 2018; and
 - b. Plaintiff's First Amendment claim against Defendant Young based on the alleged events that occurred on April 17, 2018.

Plaintiff's motion to amend, dkt. # 104, is hereby **DENIED**. Any claims against any remaining unidentified Doe defendants are hereby **DISMISSED WITH PREJUDICE** for failure to diligently prosecute.

IT IS SO ORDERED.

Dated: March 17, 2022


Thomas J. McAvoy
Senior, U.S. District Judge